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U.S. DISTRICT COURT E.D.N.Y.

★ AUG 14 2012 ★

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

RAISA MELAMED and GALYNA MALYARUK,
Individually and on behalf of all others similarly situated,

Plaintiffs,

-against-

AMERICARE CERTIFIED SPECIAL SERVICES, INC.,
and AMERICARE, INC.

Defendants.

X BROOKLYN OFFICE

NO. 11-CV-
4699(ARR)(JMA)

NOT FOR ELECTRONIC
OR PRINT PUBLICATION

ORDER

ROSS, United States District Judge:

Plaintiff filed the instant class action pursuant to the Class Action Fairness Act ("CAFA") on behalf of similarly situated employees of Americare Certified Special Services, Inc., for damages related to defendant's alleged failure to pay mandatory minimum, overtime and spread-of-hours wages in violation of New York Labor law. Now before the court is defendants' motion to dismiss plaintiff's complaint for lack of jurisdiction pursuant to the "local controversy" exception to CAFA. 28 U.S.C. 1332(d)(4)(B). See Dkt. No. 19. Plaintiffs do not oppose the motion and concede that defendants have established that "more than two thirds of the proposed class are citizens of New York, as are the Defendants." 28 U.S.C. 1332(d)(4)(B) ("A district court shall decline to exercise jurisdiction [under CAFA] . . . [if] two-thirds or more of the members of all proposed plaintiff classes in the aggregate, and the primary defendants, are citizens of the State in which the action was originally filed.") Accordingly, defendant's unopposed motion to dismiss the complaint is granted without prejudice to plaintiff's right to refile the instant action in state court. Defendants' previous motion to dismiss, filed on May 10,

2012, Dkt. No. 17, regarding plaintiff's claim for damages is denied as moot. The Clerk of Court is directed to enter judgment accordingly.

SO ORDERED.

/s/(ARR)

Allyne R. Ross
United States District Judge

Dated: August 13, 2012
Brooklyn, New York